

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TONY JENNINGS,

Plaintiff,

DECLARATION

-against-

**Civil Action No 5:17-CV-54
(LEK/TWD)**

**JEREMY DECKER, DARREN ETTINGER,
ROBERT OCKER, and CITY OF SYRACUSE,**

Defendant.

I, Kevin M. Cannizzaro, Esq. declare under the penalty of perjury, and pursuant to 28 U.S.C. § 1746, the following to be true to the best of my knowledge:

1. I am attorney duly licensed to practice law before the Courts of the State of New York and I am admitted to practice before the United States District Court for the Northern District of New York.

2. I was appointed *pro bono* counsel to represent Plaintiff, Tony Jennings (hereinafter “Jennings” or “Mr. Jennings”) in the above captioned matter. (See Dkt. Nos. 71, 72). As such, I am fully familiar with the facts, pleadings and proceedings heretofore had herein.

3. I submit this Declaration in opposition to Defendant’s motion for summary judgment and further in support of Mr. Jennings cross-motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and Northern District of New York Local Rule 7.1.

4. Attached hereto and made a part of this Declaration are the following Exhibits:

Exhibit “1” – A true and accurate copy of Plaintiff’s initial Complaint filed January 1, 2017. (Dkt. No.1);

Exhibit “2” – A true and accurate copy of the Defendant’s Answer on behalf of Defendants dated July 5, 2017. (Dkt. No. 18);

Exhibit “3” – A true and accurate copy of the Syracuse Police Department Academy Defensive Tactics Training Manual which was marked as Exhibit “E” during the course of the deposition of Defendant Ettinger’s deposition on January 7, 2020;

Exhibit “4” – A true and accurate copy of a portion of the Syracuse Police Department Academy Defensive Tactics Lesson Plan-Baton Course which was marked as Exhibit “F” during the course of the deposition of Defendant Ettinger’s deposition on January 7, 2020;

Exhibit “5” - A true and accurate copy of a second portion of the Syracuse Police Department Academy Defensive Tactics Lesson Plan which was marked as Exhibit “G” during the course of the deposition of Defendant Ettinger’s deposition on January 7, 2020;

Exhibit “6” – A true and accurate copy of the Trespass Letter of Consent from William J. Simmons, Executive Director of the Syracuse Housing Authority, to Syracuse Chief of Police Frank F. Fowler dated November 4, 2015 which was marked as Exhibit “E” during the course of the deposition of retired Syracuse Police Chief Frank F. Fowler on January 27, 2020 ;

Exhibit “7” – A true and accurate copy of the Affidavit of William J. Simmons, Executive Director of the Syracuse Housing Authority, dated November 4, 2015;

Exhibit “8” – A true and accurate copy of Plaintiff Tony Jennings formal complaint to the Citizens Review Board for the City of Syracuse dated July 25, 2016;

Exhibit “9” – A true and accurate copy of a letter correspondence from David L. Chapin, Administrator of the Citizens Review Board to Syracuse Police Chief Frank F. Fowler dated November 23, 2016 which was marked as Exhibit “M” during the course of the deposition of Defendant Ettinger’s deposition on January 7, 2020 ;

Exhibit “10” – A true and accurate copy of the Syracuse Citizen Review Board Case Report (CRB #16-061) investigation by CRB Administrator David L. Chaplin, II dated November 15, 2016;

Exhibit “11”- A true and accurate copy of the Syracuse Police Department Office of Professional Standards Case Report and Findings dated August 1, 2016 which was marked as Exhibit “G” during the course of the deposition of Chief Frank F. Fowler on January 27, 2020;

Exhibit “12”- A true and accurate copy of two correspondences dated September 7, 2016 from Syracuse Police Chief Frank Fowler to Officer Ettinger and Officer Decker which were marked as Exhibits “I” and “J” during the course of Chief Fowler’s deposition on January 27, 2020;

Exhibit “13” – A true and accurate copy of Local Law 1 for 2012 titled “A Local Law of the City of Syracuse amending Local Law 11-1993 which established a Citizens Review Board” filed with the New York State Department of State on February 5, 2012.

Exhibit “14” – A true and accurate copy of the City of Syracuse Police Citizen Encounter Study Preliminary Draft dated September 3, 2020.

5. Plaintiff respectfully adopts and incorporates by reference the entirety of the procedural history of this matter as described in the Declaration of Christina F. DeJoseph, Esq. dated July 27, 2020. (See Dkt. No. 127-1 at ¶¶5-15).

6. Plaintiff now opposes Defendants motion for summary judgment and moves via cross-motion for summary judgment against Defendant Ettinger pursuant to Fed. R.Civ.P. 56 and Local Rule 7.1 for the United States District Court for the Northern District of New York.

7. Based on the facts set forth in Plaintiff’s Response to Defendant’s Statement of Material Facts deemed not in dispute, Plaintiff’s Counter-Statement of Material Facts in Support of Cross-Motion for Summary Judgment, and Exhibits “1” through Exhibit “14” attached hereto, together with the legal arguments set forth in Plaintiff’s supporting Memorandum of Law, Mr. Jennings respectfully requests that this Court grant him full summary judgment for the excessive force claim asserted against defendant Ettinger and requests that this Court deny Defendant’s motion for summary judgment in its entirety with prejudice and on the merits and for such other and further relief as the court deems just and proper.

Dated: October 30, 2020
Albany, New York

Submitted by:

/s/Kevin M. Cannizzaro

Kevin M. Cannizzaro

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Plaintiff

17-B-0816

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